



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: ABF Freight System, Inc.--Rate Applicability--
Conflicting Versions of the Same Rate Tender

File: B-231134

Date: December 6, 1988

DIGEST

One version of a tender supplement received by the General Services Administration (GSA) depot at Fort Worth, Texas, restricted the tender's rates to shipments weighing 20,000 pounds or less. Another version of the same supplement received by the Military Traffic Management Command (MTMC) contained no similar restriction. The GSA depot tendered a shipment weighing 29,600 pounds. The carrier contended that higher tariff rates were applicable because the shipment weighed over 20,000 pounds. The GSA transportation audit determined that the lower tender rates were applicable and collected the difference as overcharges. GSA's audit action is sustained. Since the supplement received by MTMC was offered to the United States Government, without the exclusion of any agency, the lower tender rates were applicable to the shipment tendered by GSA.

DECISION

ABF Freight System, Inc. (ABF), requests review of audit action taken by the General Services Administration (GSA) in which the agency determined that ABF collected overcharges for the transportation of a government shipment, and recovered the overcharges by deduction. We sustain GSA's audit action.

BACKGROUND

GSA's supply depot, Fort Worth, Texas, tendered a shipment of Freight All Kinds to ABF on March 15, 1985, weighing 29,600 pounds. ABF billed and was paid charges on the basis

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of tariff rates. The GSA audit of transportation bills determined that lower rates in ABF Tender 1058-K, Supplement 2, effective March 1, 1985, were applicable and claimed the difference as overcharges. In the absence of voluntary refund, GSA recovered \$1,086 by deduction.

ABF contends that Tender 1058-K does not apply because block 16 of Supplement 2 states that the tender is governed by a rules tariff which restricts its application to less than truckload shipments; that is, shipments having actual weight of 20,000 pounds or less. GSA requests that we sustain the audit action on grounds that there are two conflicting versions of Supplement 2, and under these circumstances the government would be entitled to the lower rates, which here would be the rates in Tender 1058-K.

GSA provided copies of two versions of Supplement 2. The version received by the GSA depot was governed by the rules tariff's weight restriction, while a different version received by the Military Traffic Management Command (MTMC) was not. Both versions have common features. The pre-printed language in paragraph 21 states that the offer is being made "on a continuing basis to the United States Government." In block 3, where the shipper has the option of indicating whether the offer is being tendered to the "U.S. Government" or to "Other (Specify)," the "U.S. Government" block is checked on each version. The version received by GSA did not exclude MTMC and the version received by MTMC did not exclude GSA.^{1/}

DISCUSSION AND CONCLUSION

We sustain GSA's audit determination on the principle that a tender offered generally to the United States Government is available to any government agency until cancelled. This principle was applied under similar facts in Trans Country Van Lines, Inc., 52 Comp. Gen. 927 (1973), and reaffirmed in Riss International, 65 Comp. Gen. 912, 914 (1986).^{2/}

^{1/} The only exclusion on both versions is in block 17B which excludes from the tender's application a "segment of shippers described in and subject to the provisions of Section 10766 of the Motor Carrier Act of 1980," which pertains to forwarders.

^{2/} In Riss International, however, the rule was not applied because the Department of Defense had rejected the tender containing the lower rates.

In the Trans Country case the Coast Guard tendered a shipment which the carrier contended was governed by a tender that was specifically offered to that agency. We held that lower rates in another tender that had been offered "on a continuing basis to the United States Government" were applicable to the Coast Guard shipment. The tender offering the lower rates did not exclude any agency. The decision observed that the carrier could have restricted the tender to specific agencies or excluded a specific agency, but it did neither. Here also, ABF could have restricted application of the tender in the version of Supplement 2 that was sent to MTMC, but it did not do so nor did that version alter the tender's general applicability. Therefore, under that version GSA was entitled to the lower rates even though the shipment weighed in excess of 20,000 pounds.

Accordingly, we sustain GSA's audit action.

for Milton J. Doohan
Comptroller General
of the United States